APPENDIX A

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

Domestic Relations Branch

Ex parte in the matter of	*	
the petition of Oliver Lee	*	Adoption No. _____
York and Margaret Edna	*	
York for adoption of	*	
Laura Jean Sells	*	

ORDER REFERRING PETITION TO THE DEPARTMENT OF WELFARE, WASHINGTON, D. C. FOR INVESTIGATION AND REPORT

Upon consideration of the petition of Oliver Lee York and Margaret Edna York praying for the adoption of the adoptee, a female infant, it is, by the Court, this 13 day of June, 1966,

ORDERED, that a copy of said petition be referred to the Department of Welfare, Washington, D. C. to verify the allegations of the petition, to make a thorough investigation for the purpose of ascertaining if the adoptee is a proper subject for adoption and if the home of the petitioners is a suitable one for the adoptee and within a period not in excess of ninety days to report its finding with recommendation to this Court.

/s/ Joseph C. Waddy
Judge

APPENDIX B

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

DOMESTIC RELATIONS BRANCH

IN RE:

ADOPTION OF A MINOR FEMALE) A 343-66

RULE TO SHOW CAUSE

It appearing to the Court that the petitioners herein sought to adopt a female infant who was residing in their Maryland home pursuant to a contractual "Agreement for Board and Care by Foster Parents of Wards of the District of Columbia," entered into December 12, 1962, by the petitioners and the District of Columbia Department of Public Welfare, and

It further appearing to the Court that the petition to adopt was referred by The Honorable Joseph C. Waddy on June 13, 1966, to the Department of Public Welfare, Washington, D. C., for investigation and report, and

It further appearing that said investigation and report has been made and that the recommendation of the Department of Public Welfare is to the effect that the prayers of the petition be denied, and

It further appearing to the Court that the female infant has been removed from petitioners' residence pursuant to the contractual terms of the aforesaid foster parents' contract and has been placed in another foster home.

THEREFORE, PETITIONERS ARE HEREBY ORDERED TO SHOW CAUSE, if any they have, why their petition for adoption should not be denied, and further to show to this Court what standing, if any, they possess to move for an oral hearing upon the report and recommendations herein.

IT IS FURTHER ORDERED that the Department of Public Welfare show cause to this Court why there should be a finding that all procedures herein have been normal, reasonable, and accepted practice in cases of adoption herein where the Department of Public Welfare has made an investigation and recommendation after referral by this Court,

IT IS FURTHER ORDERED that the Corporation Counsel be directed to enter an appearance and to represent the Department of Public Welfare in such hearing, and it is also

ORDERED that the Clerk furnish a copy of this Rule to Show Cause to all child placing agencies licensed by the District of Columbia,

IT IS FURTHER ORDERED that in the event any such agencies should desire to enter and to file pleadings as *amicus curiae,* such leave is hereby granted.

The hearing on this rule will be scheduled for January 16, at 10 a.m., at which time the courtroom shall be sealed.

/s/ Joseph M. F. Ryan, Jr.
Judge

Dated: December 19, 1966

APPENDIX C

* * *

OPINION AND ORDER

This is an adoption case. It came on for hearing in a sealed courtroom before the Court on a rule to show cause. The rule was issued against the petitioners, husband and wife herein, and the Department of Public Welfare. That agency is before the Court in a dual capacity; first as the legal custodian of the minor child, as recited in Paragraph 5 of the petition for adoption herein. In accordance with the statute [1] on file in this Court are appropriate instruments indicating a relinquishment of parental rights to the Department of Public Welfare. The Department of Public Welfare is also before the Court because another Judge of this Court, shortly after the filing of the petition for adoption herein, referred the petition to that Department for an investigation and report.

Serious questions of jurisdiction of the Court and standing of the petitioners are initially presented. The main substantive issue and paramount consideration is the best interests of the adoptee.

The basis for jurisdiction of the Court in this particular case must depend upon the fact that "the child to be adopted is in the legal care, custody, or control of the Commissioners of the District of Columbia or their designated agency." [2] Since petitioners are neither residents of the District of Columbia, [3] nor have they actually resided in the District of Columbia for at least one year

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[1] D. C. Code § 32-786, 1961 Ed.

[2] D. C. Code, 1961 Ed., § 16-301 (b) (3)

[3] D. C. Code, 1961 Ed., § 16-301 (b) (1)

preceding the filing of the petition,[4] in order for this Court to have authority to grant a petition for adoption there must have been filed with the petition for adoption a *written statement of consent,*[5] from the Commissioners.

The particular consent necessary in the case before the Court is the one which would be required in accordance with D. C. Code, 1961 Ed., § 16-304 (b)(2)(F). No consent was filed with the petition. Under the terms of the statute, therefore, this Court may not grant the petition for adoption.[6]

Pursuant to the Order of Reference mentioned earlier, a report and recommendation was filed herein August 18, 1966, by the Department of Public Welfare. On August 29, 1966, a motion for oral hearing was filed by the petitioners' counsel. As authority for such a motion, petitioner cites the General Sessions Rules, the Federal Rules of Civil Procedure, and the District of Columbia Code Section 16, particularly 16-307 and 16-309 (a), (b), and (f).

Code Section 16-307 provides for the referral of an adoption petition for investigation, report, recommendation,

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[4] D. C. Code, 1961 Ed., § 16-301 (b) (2)

[5] D. C. Code, 1961 Ed., § 16-304 (a)

[6] D. C. Code, 1961 Ed., § 16-304. The Court is aware that under D. C. Code, 1961 Ed., § 16-304 (e) the Court may grant a petition for adoption without any of the consents specified in the Section in instances where the Court finds after hearing that the consent or consents are withheld contrary to the best interests of the child. This is discretionary power reposed in the Court to waive the consents in cases where the best interests of the child would indicate such a course. This case does not in any way warrant the use of such discretion.

and *inter alia*, provides that the written report submitted to the Court shall be filed with, and become part of the records in the case. Section 16-309 provides for the disposition of the adoption petition by the Court after it has received the report and recommendations of the agency. Subdivision B of the latter section states: "After considering the petition, the *consents*, and such evidence as the parties and any other properly interested person may present, the court may enter a final or interlocutory decree of adoption. . . . " As was mentioned earlier, no consent or consents were ever filed with the petition.

Subdivision F of the same section provides that "all proceedings with reference to adoption shall be of a confidential nature and shall be held in chambers or in a sealed courtroom with as little publicity as the court deems appropriate." Every attempt was made to insulate this proceeding from publicity. During the hearing the courtroom was sealed. Each witness was individually admonished not to discuss their testimony with any other person. In spite of these precautions, however, on the day of the hearing an article appeared in the local newspapers dealing very specifically with this particular petition.

Another Code Section must be considered with respect to the standing of the petitioners to move for an oral hearing. That is the section dealing with the sealing and inspection of records and papers.[7] It provides: "From and after the filing of petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and *only then*

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[7] D. C. Code, 1961 Ed., § 16-311

when the court is satisfied that the welfare of the child will thereby be promoted or protected. The clerk of the court shall keep a separate docket for adoption proceedings." No showing was made either in the motion papers or in the petition itself that the welfare of the prospective adoptee would be promoted or protected by permitting inspection of the file herein. Moreover, after hearing the testimony of witnesses and after reviewing the entire file, this Court is not satisfied that the welfare of the child would be promoted or protected by an inspection of the Court records herein, including the report and recommendations.

At the hearing on the petition, any ruling with respect to the standing of the petitioners or the jurisdiction of the Court in the matter was reserved. Testimony was taken initially upon the action of the Department of Public Welfare with respect to the reference of the petition. It appeared from the testimony that each and every step taken by the Department of Public Welfare in this case was completely in accord with settled procedures for investigation in adoption cases. There was no deviation from normal practice, and the persons interviewed by the Department of Public Welfare were individuals who had been recommended by the petitioners themselves as references.

From the information developed through the normal and usual sources, the Department of Public Welfare came to the conclusion and made the recommendation that the petition be denied. The basis of such suggested denial concerned alleged personality defects of both petitioners. In testimony it was developed that each petitioner was advised individually in private by a member of the Department of Public Welfare of the character defect in their particular case which was considered to be disqualifying. It appeared from the testimony from the petitioners themselves that they had been given this information.

When counsel for the petitioners stated that he was in a difficult position trying to refute allegations in a report which he was not allowed to see, the Court explained to the counsel and the petitioners the generic nature of the disqualifying information. In order to refute such allegations, petitioners were allowed to call; and in fact, had subpoenaed those who had been interviewed as references, as well as other character references whom they produced. The single additional witness was one subpoenaed forthwith by the Court when it appeared that she might be in a position to give useful testimony. Based upon the testimony of all the witnesses, it is the opinion of this Court that the report of the Department of Public Welfare herein is factually correct and that their conclusions and recommendations ought to be adopted and approved. It is, therefore, this 17th day of February, 1967,

ORDERED, ADJUDGED, AND DECREED that the rule to show cause issued herein so far as it pertains to the Department of Public Welfare is in every respect discharged, and

IT IS FURTHER ORDERED that the rule to show cause insofar as it pertains to the petitioners be and is in each and every respect made absolute, and

IT IS FURTHER ORDERED that the motion for an oral hearing upon the report and recommendations herein be and is overruled, and

FURTHER ORDERED that the petition for adoption herein be and hereby is denied.

/s/ Joseph M. F. Ryan, Jr.
Judge

APPENDIX D

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 4286

In Re

Adoption of a Female Infant

Appeal from the District of Columbia
Court of General Sessions

(Argued October 2, 1967 Decided January 19, 1968)

John C. Williams for appellants. *Paul J. Sedgwick* also entered an appearance for appellants.

Leo N. Gorman, Assistant Corporation Counsel, with whom *Charles T. Duncan,* Corporation Counsel, *Hubert B. Pair,* Principal Assistant Corporation Counsel, and *Richard W. Barton,* Assistant Corporation Counsel, were on the brief, for the District of Columbia.

Before Hood, Chief Judge, and Myers and Kelly, Associate Judges.

MYERS, *Associate Judge:* Appellants, husband and wife, petitioned the Domestic Relations Branch of the District of Columbia Court of General Sessions for the adoption of a female infant. From the denial of that petition, they have noted the present appeal.

In the years between 1951 and 1966, appellants, as foster parents, provided board and care for numerous wards of the District of Columbia in return for monetary consideration paid by the District. In 1951 appellants adopted one of the first children placed in their

care. Normally the children were placed in appellants' home for a few months and then removed. In 1960, adoptee, then a thirty-five day old female infant born out of wedlock, whose mother had relinquished her parental rights to the District of Columbia, was placed in appellants' home. Because the child was sickly, she remained there until 1966.

In May of that year appellants initiated adoption proceedings and the Department of Public Welfare conducted the investigation required by § 16-307 D. C. Code (1967). The investigation revealed that appellants' marital relationship had deteriorated and that, in the years since appellants had last been investigated, serious personality defects had developed in both husband and wife. The Department of Public Welfare therefore removed the child from appellants' home, recommended that the court deny appellants' petition for adoption, and withheld the consent required by § 16-304(b) (2) (F) D. C. Code 1967.

The court held a two-day hearing to determine whether, in the best interests of the child, it ought to grant appellants' petition despite the withholding of the necessary

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[1] Consent to a proposed adoption of a person under twenty-one years of age is necessary: . . .

(2) in accordance with the provisions of any one of the following paragraphs: . . .

(F) from . . . the Board of Commissioners in case the parental rights of the parent or parents have been terminated . . . by a release of parental rights to the Board . . . , based upon consents obtained in accordance with paragraphs (A) through (E) of this subdivision, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Board; . . .

consent. § 16-304(e) D. C. Code (1967).[2] At the conclusion of the hearing the court denied the petition for adoption.

Appellants contend that the trial judge abused his discretion in denying the petition without first appointing a guardian *ad litem* to represent the child in the proceedings before him, and by refusing to allow appellants to inspect the investigative report prepared by the Department of Public Welfare.

In an adoption proceeding the court's primary concern is the best interests of the infant adoptee. The court has an "affirmative duty to bring those interests fully before it." *Barnes v. Paanakker,* 72 App. D. C. 39, 44, 111 F.2d 193, 198 (1940). But "[t]here is no requirement that there must be one person, such as a guardian ad litem, representing all possible interest of the adoptee." *In re Adoption of a Minor,* 74 App. D. C. 50, 51, 120 F.2d 720, 721 (1941). The adoption proceeding is *ex parte* and "[c]hildren are not necessary parties, and need not always be represented by a guardian and litem." *Boone v. Boone,* 76 U. S. App. D. C. 399, 400, 132 F.2d 14, 15 (1942). Where competing parties in the proceeding are given opportunity for a thorough hearing, and the petition is vigorously advocated and contested, and witnesses are cross-examined, the interests of the adoptee can be fully presented to the court. *In re Adoption of a Minor,* 74 App. D. C. 50, 51, 120 F.2d 720, 721 (1941).

In the instant case, petitioners and the Department of Public Welfare, which appeared on behalf of the District of Columbia as adoptee's legal guardian, § 3-117 D. C.

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[2] The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interests of the child.

Code (1967),[3] to contest the adoption petition, were before the trial judge. With the participants so aligned, we have no reason to doubt that all essential facts concerning the child's welfare were presented and considered by the trial judge. Appellants have not set forth any relevant facts which were not brought to the attention of the trial judge or which might have dictated a different result, nor have they shown that the best interests of the child required the trial judge to appoint a guardian *ad litem*. We find no error in his election not to do so.

Neither did the trial judge err in refusing appellants' attorney access to the investigative report submitted by the Department of Public Welfare. Counsel for appellants was not told the precise details given by each reference and was not permitted to inspect the report personally, but the trial judge related to him the findings and the information which had been gathered from the persons appellants had listed as references. While the trial judge, in his discretion, may allow parties to an adoption proceeding to inspect the investigative report if he is satisfied that protection of the child's welfare requires such inspection, § 16-311 D. C. Code (1967),[4] we do not find that the trial judge abused his discretion in the instant case by denying such access. Appellants called numerous witnesses in an effort to establish their suitability as parents and to rebut the findings of the report, but their own witnesses as well

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[3] The Board shall have full power (1) to accept for care, custody, and guardianship dependent or neglected children whose custody or parental control has been transferred to the Board . . .

[4] From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and only then when the court is satisfied that the welfare of the child will thereby be promoted or protected. The clerk of the court shall keep a separate docket for adoption proceedings.

as others called by the Department of Public Welfare and by the trial judge, described in detail incidents indicative of serious personality defects in both appellants and descriptive of a marital relationship rendering appellants unsuited to be adoptive parents. If the testimony had indicated that appellants were ideally qualified to be adoptive parents and the report had indicated otherwise, protection of the child's interests might have required that appellants' counsel be allowed to inspect the report so as to be able to rebut any derogatory finding; but such a situation does not exist here, and appellants have not shown that the welfare of the child required their personal inspection of the report.

Upon the record, we rule that the court correctly denied appellants' petition for adoption.

Affirmed.

APPENDIX E

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 21,628 September Term, 1967

In Re: D.C.C.A. 4286

Adoption of a Female Infant

Before: Bastian, Senior Circuit Judge; and Burger and Wright, Circuit Judges, in Chambers.

ORDER

On consideration of petitioner's petition for allowance of an appeal from a judgment of the District of Columbia Court of Appeals, of petitioner's brief in support thereof, and respondent's brief in opposition thereto, it is

ORDERED by the Court that petitioner's aforesaid petition is denied.

Per Curiam.

Circuit Judge Burger did not participate in the foregoing order.

CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of July, 1968, a true and correct copy of the foregoing petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit was served upon the Office of the Corporation Counsel, Washington, D. C., which entered an appearance on behalf of the Department of Public Welfare, by depositing copy thereof in the United States Mail, Certified Return Receipt Requested, addressed to District Building, Washington, D. C.

ROBERT A. DIEMER
SEBERT H. KEIFFER